

COLORADO STATE BOARD OF PHARMACY

January 20, 2011

Minutes

The Colorado State Board of Pharmacy meeting was convened by President Jeannine Dickerhofe, R.Ph., at approximately 8:30 a.m. on Thursday, January 20, 2011 at 1560 Broadway, Conference Room 110 D, Denver, CO 80202. Notice of this meeting was given in accordance with Division of Registrations Policy Number 80-17.

Board members attending were: Mary K. Arceneaux, R.Ph., Jeannine Dickerhofe, R.Ph., E. Katherine Edelblut, R.Ph., Leonard L. Hierath, P.E., Paul Limberis, R.Ph., Luis A. Rivera-Lleras, R.Ph.; and Averil Strand, R.N.

Staff members attending were Wendy Anderson, R.Ph., Program Director; Susan Martin, R.Ph., Acting Program Director; Chris Gassen, R.Ph., Chief Inspector; Mark O'Neill, R.Ph., Inspector; Lisa Cornett, R.Ph., Inspector; and Linda Acosta, Complaint and Licensing Specialist. Also present were Jo Kaye, Assistant Attorney General, and Kathleen Spalding, Assistant Attorney General, to advise the Board.

APPROVAL OF MINUTES

The Board approved the minutes from the November 18, 2010 and December 3, 2010 meetings as amended.

APPEARANCES

Saul A. Larsen, Policy Analyst for the Office of Policy, Research and Regulatory Reform, introduced himself to the Board and reviewed the Sunset process with the Board.

ADDITIONS TO THE AGENDA

None.

HEARINGS

The Board voted unanimously to cancel the public hearing concerning additions or amendments to regulations 2.01.50, 2.01.52, 5.00.50, 11.04.10, 15.01.11 and 15.09.11 (3 CCR, 719-1) scheduled for 9:30 a.m. in Conference Room 110 D at 1560 Broadway, Denver, Colorado 80202, and to renotice the hearing for a future date and time.

INITIAL DECISIONS

Loren M. Priem, Pharmacy Intern Applicant, Office of Administrative Courts Case 2009-0014

The Board heard oral arguments from Jo Kaye, AAG, and Sheila H. Meer, Esq., Counsel for Mr. Priem.

At 1:25 p.m., Board President Jeannine Dickerhofe moved that the Board enter into Executive Session pursuant to CRS 24-6-402(3)(a) to discuss with its Counsel matters of pending and imminent court action, attorney client communications and matters required to be kept confidential by federal or state law. The motion was seconded. The vote was unanimous with six votes approving the motion to go into Executive Session and none opposing.

At 2:55 p.m., the Board entered back into public session to determine the course of action it wished to take with regard to this matter. After consideration of the oral arguments by both parties, the record as defined in the Petitioner's Designation of Record filed with the Board on November 15, 2010, the Initial Decision, and the pleadings filed on exceptions by the parties, the Board voted, by a majority vote, to affirm, modify, or set aside the following regarding the Initial Decision:

1. The Administrative Law Judge's ("ALJ") Findings of Fact set forth in the Initial Decision are adopted and affirmed.

2. The ALJ's Conclusions of Law # 1 – 3 are adopted and affirmed.

3. The ALJ's Conclusion of Law # 4 is adopted and affirmed to the extent that the ALJ concludes that the mere fact that Priem committed felonies in the past does not, in and of itself, entitle the Board to a favorable ruling of its denial of Priem's requested license. To the extent that the ALJ concludes that the Board cannot deny a license by considering these crimes along with other factors, including but not limited to the fact that the crimes were related to the practice of pharmacy, the Board rejects this Conclusion of Law. This Conclusion of Law is erroneous, as fully set forth in #5, below.

4. The ALJ's Conclusions of Law # 5 – 13 are adopted and affirmed.

5. The Board adopts in part, and rejects in part, the ALJ's Conclusions of Law # 14. In Conclusion of Law #14, the ALJ determined that: 1) Priem "proved" his eligibility for licensure pursuant to the provisions of § 24-5-101, C.R.S., and, 2) that § 24-5-101(1) provides that the mere fact of a past felony should not, in and of itself, create a bar to obtaining a state license. The Board accepts that portion of Conclusion of Law #14 quoting the provisions of § 24-5-101(1) and does not dispute that the mere fact that an applicant has committed felonies in the past, in and of itself, should not create a bar to licensure. The Board rejects the ALJ's conclusion that Priem has "proven" his eligibility for licensure through § 24-5-101, C.R.S. This Conclusions of Law is erroneous.

In determining an appropriate action in a licensing matter, the Board must consider its responsibilities to regulate the practice of pharmacy in order to protect the public interest and confidence in the profession. Section 12-22-101 of the Pharmaceuticals and Pharmacists Act statute states, in part that "It is a matter of public interest and concern that the practice of pharmacy, as defined in this part 1, merits and receives the confidence of the public..." *Id.*

To promote this goal, the Pharmaceutical and Pharmacists Act provides that the Board may deny an applicant for licensure as a pharmacy intern "when the board determines that such applicant, licensee, or registrant has engaged in activities that are grounds for discipline." Section 12-22-125(1), C.R.S., provides (in part) the following grounds for discipline:

The board may suspend, revoke, refuse to renew, or otherwise discipline any license or registration issued by it, after a hearing held in accordance with the provisions of this section, upon proof that the licensee or registrant:

...

(b) is guilty of the commission of a felony or has had accepted by a court a plea of guilty or nolo contendere to a felony or has received a deferred judgment and sentence for a felony;

(c) Has violated:

(I) Any provisions of this part 1, including but not limited to any acts in section 12-22-126;

(II) The lawful rules of the board; or

(III) Any state or federal law *pertaining to drugs*. (emphasis added).

C.R.S. § 24-5-101(1) provides broadly that the mere fact of a past felony should not, in and of itself, create a bar to obtaining a state license. The statute “is an expression by the general assembly of a public concern that persons who have been convicted of felonies . . . should not be deprived of their right to gainful public employment solely due to their past activities.” *Beathune v. Colorado Dealer Licensing Board*, 198 Colo. 483, 601 P.2d 1386, 1387 (1979). The statute does not require automatic licensure for all individuals convicted of past felonies, and it does not prohibit a licensing body from rejecting an application for licensure where more is at issue than the mere fact that the applicant has a felony record. *See Zamarripa v. Q & T Foods, Inc.*, 929 P.2d 1332, 1339-40 (Colo. 1997); *Beathune*, 601 P.2d at 1387.

The Board’s task is to reconcile and apply both the provisions of the Pharmaceuticals and Pharmacy Act and C.R.S. § 24-5-101(1).

In this case, the Board has considered Priem’s crimes. In accordance with the law, the Board also considered the nature of the crimes in relation to Priem’s pharmacist license and his application to be a pharmacy intern. The Board continues to have a very real concern that the crimes were not unrelated to the professional dispensing of prescription drugs. To the contrary, Priem’s convictions were squarely related to his professional position. Priem admitted, and the ALJ found, that while working as a pharmacist licensed by the Board, Priem stole large quantities of drugs from three different employer pharmacies. While working as a pharmacist licensed by the Board, he completed and signed a DEA Form 222 through which he ordered two 100-tablet packages of Oxycodone 80 mg ER, five 100-tablet packages of Oxycontin 40 mg, and two 500-tablet packages of Oxycodone/APAP 5 mg/325 mg. There was no evidence that these actions were fueled by an addiction or need of Priem’s; the drugs were not for his own use. Rather, Priem sold at least some of these drugs for monetary gain. He also gave some away. None of the recipients of these drugs possessed prescriptions for the drugs.

The Board’s concern is not merely that Priem committed crimes. The Board’s concern is that Priem violated laws *pertaining to drugs*, that his violation of laws pertaining to drugs related directly to the professional dispensing of prescription drugs, that he used his pharmacist license to perpetrate these crimes, and that he now seeks licensure in the same professional arena.

In considering whether to grant Priem’s application, the Board has considered both the state’s policy of employing individuals who committed felonies in the past, and the evidence presented by Priem that he has been rehabilitated. The Board has weighed

these factors against the circumstances surrounding Priem's past crimes, the nature of his crimes, the past abuse of his pharmacist license, and the fact that he seeks a license in the same profession. Based on the particular circumstances of this case, the Board determines that Priem's application for a license as a pharmacy intern should be denied.

The ALJ's conclusion that Priem should receive a pharmacy intern license because he proved his eligibility for licensure pursuant to § 24-5-101, C.R.S., is inconsistent with the law and facts cited above. For these reasons, this portion of the ALJ's Conclusion of Law #14 is set aside.

6. The ALJ's Conclusion of Law #15 is adopted and accepted, except for the ALJ's assertion that §24-5-101(2), C.R.S., requires, in this case, that the applicant's moral character should be examined at the time of application. The Board rejects this Conclusion of Law. By its terms, §24-5-101(2), C.R.S., applies to circumstances where a state or local agency is required to make a finding, as a condition to the issuance of a license, that an applicant for a license is a person of good moral character. The Board of Pharmacy has no such requirement. Specifically, there is no legal requirement that an applicant for licensure by the Board must prove good moral character as a condition for licensure at the time of application. For these reasons, this portion of Conclusion of Law #15 is set aside.

7. For the reasons stated above, the ALJ's Conclusion that Priem should be granted a pharmacy intern license is rejected and set aside. It is the decision of the Board that the Board's denial of Priem's application for licensure as a pharmacy intern should be affirmed, and that the application should be DENIED.

REPORTS

President's Remarks

None.

Program Director's Report

Ms. Anderson presented the Board with a memorandum regarding the annual designation of Board meeting notices. The Board voted unanimously to designate the Division of Registrations' reception area and the internet as being the appropriate venues to post public notices of the Board's meetings for 2011.

Ms. Anderson presented the Board with proposed amendments to the following Board Policies: 10-1 (Protocols for 30-Day Letter); 10-5 (Practice Monitor Compliance Policy); 10-6 (Delegation of Authority to Program Director or Section Director); and 20-2 (Board Criteria to Identify Applications which Require Board Review). The Board voted unanimously to approve the proposed amendments to each policy as amended.

Ms. Anderson requested that the Board designate a voting delegate for the National Association of Board of Pharmacy annual meeting. The Board voted unanimously to designate Luis Rivera-Lleras as its voting delegate and to designate Paul Limberis as its alternate voting delegate.

Ms. Anderson also requested that the Board provide its staff with potential topics for discussion at the Board February 17, 2011 annual planning meeting. Topics offered by the Board were: pharmacy technician certification; the definition of coercion; and Board Rule 3.01.10(b).

Colorado Pharmacists Society (CPS) – Paul Limberis, RPh

The 19th Annual Winter Continuing Education (CE) Seminar was held on January 9-12, 2011 at the Westin Riverfront in Avon, Colorado where fifteen hours of continuing education were provided. The topics included: a new drug update; law update; safe use of prescription drugs during pregnancy and lactation; medication adherence and improving care in the asthma patient; and pharmacotherapies used in the treatment of infections, depression and cardiovascular disease. Next year's Winter CE Seminar will be held on January 8-11, 2012, when the 20th anniversary of this seminar will be celebrated.

The 2011 Advances in Pharmacy Practice will be held on February 26, 2011. This full day annual education seminar will be held in conjunction with the University of Colorado Denver School of Pharmacy and 6 hours of CE will be offered. The topics will include: a new drug update; opportunities in primary care pharmacy practice; immunosuppressants used in organ transplantation; and pharmaco-therapies used in the treatment of obesity, multiple sclerosis, and rheumatoid arthritis.

Planning has already begun for the Annual Summer Meeting to be held on June 9-11, 2011, in Estes Park, Colorado, where 10 hours of CE will be offered.

Governor's Expert Emergency Epidemic Response Committee (GEEERC) – Paul Limberis, RPh

No report was presented. The next meeting of the GEEERC is scheduled for February, 2011.

Intern & School Relations – Jeannine Dickerhofe, RPh

Dr. Catherine Jarvis, Assistant Dean of the University of Colorado Denver School of Pharmacy, reported that the school has received approximately 900 applications for the next incoming class. She further reported that the school itself will physically move into its new facilities in late-February of 2011. Dr. Jarvis further reported that this new facility will not maintain any traditional class rooms, as all didactic class room lectures will be held in one of three large education buildings that will be also be used by the medical, nursing, and dental schools.

Jeannine Dickerhofe reported on behalf of the Regis University School of Pharmacy that the school is in the process of interviewing candidates for the Class of 2015 for a class size of 75 students. The Class of 2014 White Coat Ceremony was held in January for 76 students. Ms. Dickerhofe further reported that the school is still actively recruiting a new dean as well as 9 new faculty members for the Departments of Pharmacy Practice and Pharmaceutical Sciences.

Legislation - Jeannine Dickerhofe, RPh

Jeannine Dickerhofe reported on the following bills or anticipated bills for the 2011 Legislative Session:

- Senate Bill (SB) 11-043 – concerning the safe collection and proper disposal of home-regulated sharps disposal containers;
- The Sunset Bill for midwives – specifically concerning prescriptive authority;
- HB 11-1043 – concerning medical marijuana; and
- Other anticipated bills which may address health insurance exchanges, accountable care organizations, and e-prescribing.

The next meeting of the Colorado Pharmacy Coalition (CPC) will be January 26, 2011. The coalition has addressed a number of topics that will be considered in the 2011 Pharmacy Sunset Review. The coalition, composed of representatives from every pharmacy organization in the state, the schools of pharmacy, Peer Assistance Services, and the Department of Regulatory Agencies, will also be monitoring the sunset bills concerning midwives, optometrists, and the Prescription Drug Monitoring Program.

Inspectors

CJ Pharmacy, PDO 806 & CJ Pharmacy II, PDO 807

The Board reviewed an Agenda Memorandum from Lisa Cornett and, after due consideration of the available information, voted unanimously to initiate a complaint against both the prescription drug outlet registration of CJ Pharmacy II and the pharmacist license of Jenae Lorenzo-Lock (RPH 15292), the pharmacist manager of CJ Pharmacy II.

Board Rule 3.00.50(e)

The Board reviewed an Agenda Memorandum from Mark O'Neill regarding proposed amendments to Board Rule 3.00.50(e).

After due consideration of the available information, the Board voted unanimously to move the proposed amendments to this rule to a future public rules hearing.

OLD BUSINESS

Stipulations

Lori A. Chesler, RPH 11238

Luis Rivera-Lleras recused.

The Board reviewed an Agenda Memorandum from Susan Martin regarding Ms. Chesler's compliance with her First Amended Stipulation and Final Agency Order with the Board, and voted unanimously to refer the matter to Executive Session for legal advice.

After Executive Session, the Board voted unanimously to note the information.

Sheila L. Fossenier, RPH 16546

The Board reviewed an Agenda Memorandum from Chris Gassen regarding Ms. Fossenier's compliance with her Stipulation and Final Agency Order with the Board, along with correspondence from Ms. Fossenier.

After due consideration of the available information, the Board voted unanimously to refer the matter to Executive Session for discipline.

Bryan R. Helstad, RPH 11549

E. Katherine Edelblut recused.

The Board reviewed an Agenda Memorandum from Linda Acosta regarding a request from Mr. Helstad to be released from his Stipulation for Interim Cessation of Practice with the Board.

After due consideration of the available information, the Board voted unanimously to refer the matter to Executive Session for discipline.

NEW BUSINESS

Complaints

Martha H. Bok, RPH 15351
Paul Limberis recused.

2011-1839

The Board voted unanimously to refer the case to Executive Session for discussion of possible disciplinary action.

After Executive Session, the Board voted unanimously to dismiss the case. The Board found that there was no reasonable cause to warrant further action at this time.

Donald E. Brown, RPH 12815

2011-1814

The Board voted unanimously to refer the case to Executive Session for discussion of possible disciplinary action.

Dr. David B. Cox, DR 47073

2011-2080

The Board voted unanimously to refer the case to Executive Session for discussion of possible disciplinary action.

Custom Pharmacy Solutions, L.L.C., OSP 5753

2011-1724

The Board voted unanimously to refer the case to Executive Session for discussion of possible disciplinary action.

Robin L. Howe, RPH 17621

2011-1089

The Board voted unanimously to dismiss this case as being without merit.

Kyle A. Meyer, RPH 18439

2011-1015

The Board voted unanimously to refer the case to Executive Session for discussion of possible disciplinary action.

After Executive Session, the Board voted unanimously to dismiss the case. The Board found that there was no reasonable cause to warrant further action at this time.

The Board, however, also voted unanimously to initiate a complaint against the prescription drug outlet registration of Wal-Mart Pharmacy # 10-1659 (PDO 11-10) for an alleged failure to maintain a record detailing a prescription that was returned to stock.

Safeway Pharmacy # 3714, PDO 79-24 **2011-1321**

The Board voted unanimously to refer the case to Executive Session for discussion of possible disciplinary action.

Louise C. Griggs, RPH 11367 **2011-1322**

The Board voted unanimously to refer the case to Executive Session for discussion of possible disciplinary action.

After Executive Session, the Board voted unanimously to issue a Letter of Admonition for violations of the Pharmaceuticals and Pharmacists Act.

Safeway Pharmacy # 1249, PDO 79-24 **2011-1466**

The Board voted unanimously to refer the case to Executive Session for discussion of possible disciplinary action.

After Executive Session, the Board voted unanimously to dismiss the case. The Board found that there was no reasonable cause to warrant further action at this time.

Sean C. Stodgell, RPH 16188 **2011-0961**

The Board voted unanimously to dismiss this case as being without merit.

The Board, however, also voted unanimously to refer the case to Executive Session for legal advice.

After Executive Session, the Board voted unanimously to send a letter directing King Soopers Pharmacy # 21 (PDO 122) to respond to the Board within 45 days detailing the manner in which the pharmacy has addressed its specific closing procedures.

Jason Tixier, RPH 18052 **2011-1075**

The Board voted unanimously to refer the case to Executive Session for discussion of possible disciplinary action.

After Executive Session, the Board voted unanimously to dismiss the case. The Board found that there was no reasonable cause to warrant further action at this time.

Palangat Velayudhan, RPH 15429 **2011-0897**

The Board voted unanimously to refer the case to Executive Session for discussion of possible disciplinary action.

After Executive Session, the Board voted unanimously to issue a Letter of Admonition for violations of the Pharmaceuticals and Pharmacists Act.

The Board also voted unanimously to initiate a complaint against the prescription drug outlet registration of Rite Aid # 6367 (PDO 53-54) for its alleged failure to maintain a specific dispensing transaction on its corresponding daily printout.

Surinder K. Verma, RPH 17281

2011-1018

The Board voted unanimously to refer the case to Executive Session for discussion of possible disciplinary action.

After Executive Session, the Board voted unanimously to dismiss the case as being without merit.

Wal-Mart Pharmacy # 10-1492, PDO 7-43

2011-1436

The Board voted unanimously to dismiss this case as being without merit.

Nicole M. Zwickl, RPH 18809

2011-0962

The Board voted unanimously to refer the case to Executive Session for discussion of possible disciplinary action.

After Executive Session, the Board voted unanimously to dismiss the case as being without merit.

The Board also voted unanimously to issue a letter of guidance to Majdi Fahed (RPH 18326), the pharmacist manager of Rite Aid # 6157 (PDO 79-29), reminding him of the requirement to maintain a complete list of employees that details all pharmacists and pharmacy interns practicing at the pharmacy during the preceding two years.

LICENSING/REGISTRATION

Nicholas J. Fleming, Pharmacist Applicant

The Board reviewed Mr. Flemming's pharmacist application and, after due consideration of the available information, voted unanimously to refer the matter to Executive Session for legal advice.

After Executive Session, the Board voted unanimously to grant Mr. Flemming a pharmacist license.

David Bozzi, RPH 11659, Pharmacist Reinstatement Applicant

The Board reviewed Mr. Bozzi's pharmacist reinstatement application and, after due consideration of the available information, voted unanimously to refer the matter to Executive Session for possible disciplinary action.

After Executive Session, the Board voted unanimously to deny Mr. Bozzi's pharmacist reinstatement application and refer the matter for discipline. Grounds for denial were noted to include, but were not limited to, CRS 12-22-125(1)(d).

Kevin J. Potts, RPH 16983, Pharmacist Reinstatement Applicant

The Board reviewed Mr. Potts' pharmacist reinstatement application and, after due consideration of the available information, voted unanimously to refer the matter to Executive Session for possible disciplinary action.

Cary Burmeister, Pharmacy Intern Applicant

The Board reviewed Mr. Burmeister's pharmacy intern application and, after due consideration of the available information, voted unanimously to grant Mr. Burmeister a pharmacy intern license.

Bradley M. Uher, Pharmacy Intern Applicant

The Board reviewed Mr. Uher's pharmacy intern application and, after due consideration of the available information, voted unanimously to grant Mr. Uher a pharmacy intern license.

Schering Corp., Out of State Prescription Drug Wholesaler Applicant

The Board reviewed Schering's out of state prescription drug wholesaler application and, after due consideration of the available information, voted unanimously to grant Schering an out of state prescription drug wholesaler license/registration.

MISCELLANEOUS

Correspondence, etc.

National Association of Boards of Pharmacy (NABP) Developing System to Link Prescription Monitoring Programs Across States to Facilitate Data Exchange

The Board noted the information.

November 2010 Newsletter from Oregon State Board of Pharmacy

The Board noted the information.

Opioid Compliance Consulting Electronic Prescription Drug Monitoring Program Controlled Substance Monitoring Agreement

The Board voted unanimously to reissue a new 1-year contract with Opioid Compliance Consulting.

Patient Safety Task Force Report

The Board noted the information.

Request for Clarification from College Pharmacy, PDO 24-38

The Board voted unanimously to table consideration of this request pending receipt of additional information from the pharmacist manager of College Pharmacy.

Request from Nanette Tinker to Amend Board Rule 3.01.10(b)

The Board voted unanimously to table consideration of this request pending results of the Board's further review of this topic at its February 17, 2011 annual planning meeting.

EXECUTIVE SESSION

At 10:45 a.m., Board President Jeannine Dickerhofe moved that the Board enter into Executive Session.

The motion was seconded. The vote was unanimous with six votes approving the motion to go into Executive Session and none opposing.

The Board exited Executive Session at 12:20 p.m.

Open Session

Case 2011-1433

E. Katherine Edelblut recused.

The Board voted unanimously to issue a Letter of Admonition for violations of the Pharmaceuticals and Pharmacists Act.

Case 2011-1532

The Board voted unanimously to dismiss the case. The Board found that there was no reasonable cause to warrant further action at this time.

ADJOURNMENT

The Board adjourned at 3:21 p.m.

Approved by Jeannine Dickerhofe, R.Ph., President Date: April 22, 2011.